

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff/Respondent.**

**vs.**

**No. CV 16-00370 JB/LAM  
No. CR 11-02660 JB**

**DAVID E. HENRY,**

**Defendant/Movant,**

**ORDER TO CURE DEFICIENCY**

**THIS MATTER** is before the Court on correspondence from Movant David E. Henry dated April 20, 2016 (*Cv.Doc. 1*; *Cr.Doc. 46*). The correspondence expresses intent to pursue a claim under the U.S. Supreme Court's decisions in *Johnson v. United States* and *Welch v. United States*. While Movant's letter was docketed as a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, if Movant wishes to pursue a claim for relief under *Johnson* and *Welch*, Movant must file a motion in proper form under 28 U.S.C. § 2255. Pursuant to the Rules Governing Section 2255 Proceedings for the United States District Courts, a § 2255 motion must "be in the form of a motion to vacate, set aside, or correct the sentence" and must:

- (1) specify all the grounds for relief available to the moving party;
- (2) state the facts supporting each ground;
- (3) state the relief requested;
- (4) be printed, typewritten, or legibly handwritten; and
- (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.

Rules Governing Section 2255 Proceedings 2(a)-(b). Furthermore, the motion must be on the proper form or substantially follow the proper form. *Id.* 2(c).

Movant's letter is not in the form of a motion to vacate, set aside, or correct sentence, does not specify all the grounds for relief available, does not state the facts supporting each ground for relief or the relief requested, and is neither on the proper form nor does it substantially follow the proper form. If Movant wishes to pursue relief under 28 U.S.C. § 2255, he must cure these deficiencies and comply with the Rules Governing Section 2255 Proceedings. Failure to timely cure these deficiencies may result in the dismissal of his Motion (*Cv.Doc. 1*; *Cr.Doc. 46*) without further notice.

**IT IS THEREFORE ORDERED** that Movant cure the deficiencies designated above within thirty (30) days from entry of this order;

**IT IS FURTHER ORDERED** that the Clerk of the Court mail to Movant, together with a copy of this order, a form 28 U.S.C. § 2255 motion with instructions.

**IT IS SO ORDERED.**

  
**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**